



**Minority Media &
Telecom Council**

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December 20, 2012

Marlene Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Dear Ms. Dortch:

RE: Notice of Ex Parte Communication, Docket No. 12-268 (Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions)

This letter reports on a meeting held Wednesday, December 19, with FCC staff from the Wireless Bureau, including Ruth Milkman, Bureau Chief, Jane Jackson, Associate Bureau Chief, Margaret Wiener, Division Chief, Auctions & Spectrum Access Division, Gary Michaels, Deputy Chief, Auctions & Spectrum Access Division, Brian Regan, Legal Advisor, and Maria Kirby, Legal Advisor. From the FCC Office of General Counsel were Sean Lev, General Counsel, Marilyn Sonn, Deputy Associate General Counsel (via phone), David Horowitz, Assistant General Counsel, and William Scher, Assistant General Counsel. Participating from MMTC were Maurita Coley, Vice President and Chief Operating Office, Joycelyn James, Senior Attorney, and myself (via phone).

The topic of our discussion was how the Diversity Advisory Committee's Overcoming Disadvantage Preference ("ODP"), a race- and gender neutral proposal for increasing participation of minorities and women,¹ might operate in the context of wireless licensing. Many of the issues presented by the Wireless Bureau will be developed and addressed in greater detail in a subsequent filing we will offer in this proceeding, including what qualifies as a disadvantage and how is one weighed against another; how to assess corporate applicants, which applicants from a corporation would qualify for the preference; how to measure the extent to which the

¹ See Media and Wireless Telecommunications Bureaus Seek Comment on Recommendation of the Advisory Committee on Diversity for Communications in the Digital Age for a New Auction Preference for Overcoming Disadvantage, Public Notice, 25 FCC Rcd 16854 (Dec. 27, 2010) ("ODP Notice"). This proposal, unanimously adopted by the Diversity Committee can be found on the its webpage at <http://transition.fcc.gov/DiversityFAC/meeting101410.html> (then follow link to "Recommendation on Preference for Overcoming Disadvantage") (last visited Dec. 20, 2012).

applicant has overcome/is overcoming the disadvantage; and how an applicant would document a showing of disadvantage.

The ODP recommendation lists eight possible disadvantages that could apply.² While there is no simple fix to rectify the low levels of diversity in wireless licensees, the extent to which one disadvantage is more compelling than another may be difficult to quantify but not impossible to determine. Further, while ODP is designed to assess individual applicants, there are ways the preference could be applied to businesses of varying size. One such manner is to give *pro-rata* weight to the organization to the extent that the disadvantaged applicant has control in the company. There also could be caps on how large a company could be to qualify in order to ensure that the preference stays true to its goals of expanding opportunity to new entrants,³ and to “assist applicants who otherwise would be underrepresented and undervalued in the application process.”⁴ Ideally, applicants would pre-qualify for ODP, but their status could be challenged along with other general qualifications, similar other auction winners.

We appreciate the opportunity to discuss this important step toward enhancing the pool of well-qualified candidates⁵ and look forward to working with the Commission to flesh out the details on how to make the Diversity Committee’s ODP operational in the wireless and broadcast contexts over the next few weeks.

Respectfully submitted,

David Honig

David Honig
President

² See Recommendation on Preference for Overcoming Disadvantage, Advisory Committee on Diversity for Communications in the Digital Age (adopted Oct. 14, 2010) at 4 (“OPD Preference”).

³ Id. at 3

⁴ Id. at 6.

⁵ Id. at 1.